IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

WRIT PETITION No. 702 OF 2003

PETITIONER :- Rufena Minj wife of Shri Silas Tirkey aged 35 years working as Lady Health Visitor District Hospital Jashpur District - Jashpur (C.G.)

VERSUS

RESPONDENTS :-

1. State of Chhattisgarh through the secretary Health Department, Mantralaya D.K.S. Bhawan G.E. Road, Raipur C.G.

2. Joint director Health Services Bilaspur, Division, Bilaspur C.G.

3. Chief Medical Officer, Raigarh C.G.

4. Block Medical Officer P.H.C. Gharghoda Distt. Raigarh C.G.

5. Chief Medical Officer Jashpur Nagar Distt. Jashpur C.G.

P. R. No. 4551/03
Presented by Shri Pankaj Bajpai
dated 11/12/03

PETITION UNDER ARTICLES 226 & 227 OF CONSTITUTION OF INDIA

(45)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 702 of 2003

Petitioner : Rufena Minj

Versus

Respondents : State of Chhattisgarh & others

Shri H.B. Agrawal, Senior counsel with Shri Pankaj Agrawal, counsel for the petitioner.

Shri Ajay Dwivedi, Panel lawyer for the State/respondents.

ORAL ORDER

(10th May, 2006)

1. Learned counsel for the petitioner submits that the petitioner was posted at Gharghoda Primary Health Centre as Lady Health Visitor, District Jashpur. The petitioner was suspended by order dated 30.3.1993 (Annexure P/1). On 4.7.2000 (Annexure P/2) after a period of about 7 years, the order of suspension was revoked and the question for payment of wages was to be decided by the enquiry officer, in accordance with law.

2. According to learned counsel for the petitioner, the petitioner was denied benefit of two annual increments and the salary and other pecuniary benefits for the period, the petitioner remained under suspension for about 7 years by order dated 3.10.2002 (Annexure P/6) without holding any enquiry.

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3. Learned counsel appearing for the respondents to the reply of the respondents at paragraphs 14 and 15, which are as under :-

> "14. Reply to para 6(d) : It is true under Chhattisgarh Civil Services (Classification, Control and Appeal) Rules the suspension order automatically revoked after 45 days if charge sheet did not serve this suspension period can be extended up to 90 days if the charge sheet did not serve the suspension order automatically stands revoked but having knowledge this fact and rules, the petitioner kept herself absent from duty for seven years she never made any representation to her authorities.
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> 15. Reply to para 6(e) : Withholding of salary was made in accordance with order passed Annexure P-6. The petitioner is getting all her salary as per Annexure attached. She is getting what she is entitled. She is not entitled to her salary during the period of her absent from duty and also in compliance of the order Annexure P-6."

4. On perusal of the impugned order dated 3.10.2002, it appears that during suspension period, a charge sheet was issued. Reply to the charge sheet was filed by the petitioner. The respondents, being not satisfied with the reply, imposed the penalty of withholding of two annual increments and further arrears of payment of salary during the period of suspension without holding an enquiry.

5. In view of the foregoing, it is clearly evident that no enquiry was held before passing the impugned order

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imposing penalty of withholding of two annual increments and non-payment of full salary and other pecuniary benefits for the period, the petitioner was suspended. The impugned order dated 3.10.2002 visits with penal consequences and no order which adversely affects the employee, can be passed without affording an opportunity of hearing to the employee concerned. The principle of natural justice is the basis of principle of rule of law.

5. For the reasons stated-above, the impugned order dated 3.10.2002 (Annexure P/6) is quashed and the petitioner is entitled to consequential benefits. However, in the facts and circumstances of the case, the respondents are at liberty to hold the enquiry, if necessary, for considering the case as to whether the petitioner was entitled to salary or not. The question of grant of full increments may also be considered at the time of enquiry. The petitioner is also at liberty to raise issue of delay in holding the enquiry.

6. The petition is allowed to the above extent. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu